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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/650,573	08/28/2003	Irina Ganopolsky	JBP-5013	8257

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EXAMINER

MRUK, BRIAN P

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 06/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/650,573

Applicant(s)

GANOPOLSKY ET AL.

Examiner

Brian P. Mruk

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4,9,11-14 and 16-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4,9,11-14 and 16-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 5/31/05.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May 31, 2005 has been entered.
2. This Office action is in response to Applicant's amendment filed May 31, 2005. Applicant has amended claims 1 and 11. Claims 5-7 and 10 have been canceled. Currently, claims 1-4, 9, 11-14 and 16-19 remain pending in the application.
3. The text of those sections of Title 35 U.S. Code not included in this action can be found in the prior Office actions, Paper Nos. 20041027 and 20050226.
4. The rejection of claims 1-4, 9, 11-14 and 16-19 under 35 U.S.C. 103(a) as being unpatentable over Shana'a et al, U.S. Patent No. 6,737,394, is withdrawn in view of applicant's amendments and remarks.

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5. The provisional rejection of claims 1-4, 9, 11-14 and 16-19 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 3-4, 9-12 and 17-18 of copending Application No. 10/650,226 is maintained for the reasons of record.

6. The rejection of claims 1-4, 9, 11-14 and 16-19 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-6, 9-14 and 16-17 of copending Application No. 10/650,495 is maintained for the reasons of record.

NEW GROUNDS OF REJECTION

Claim Objections

7. Claims 1-4, 9 and 11-13 are objected to because of the following informalities:

The phrase "the weight ratio of the anionic surfactant: amphoteric surfactant is from about 1:0.8 to about 1:4" appears twice in instant claim 1. One occurrence of this phrase should be deleted.

Instant claims 2-4, 9 and 11-13 are objected to for being dependent upon claim 1. Appropriate correction is required.

Claim Rejections - 35 USC § 112

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claim 13 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

10. Claim 13 recites the limitation "The composition of claim 1, wherein the nonionic surfactant" in line 1. There is insufficient antecedent basis for this limitation in the claim. The examiner notes that the term "nonionic surfactant" does not appear in instant claim 1. The examiner suggests that claim 13 should be amended to depend from claim 12 to provide proper antecedent basis for the term "nonionic surfactant". Appropriate correction and/or clarification is required.

Claim Rejections - 35 USC § 102

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

12. Claim 14 is rejected under 35 U.S.C. 102(e) as being clearly anticipated by Decoster et al, US 2003/0147827.

Decoster et al, US 2003/0147827, discloses a shampoo composition comprising 7% by weight of sodium lauryl ether sulfate, 2.5% by weight of cocoylbetaine, 0.8% by weight of AQUA SF1, and adjunct ingredients, per the requirement of instant claim 14 (see Example 6 of Decoster et al, US 2003/0147827). Therefore, instant claim 14 is anticipated by Decoster et al, US 2003/0147827.

Response to Arguments

13. Applicant's arguments filed May 31, 2005 have been fully considered but they are not persuasive.

It is noted by the examiner that the provisional rejection of instant claims 1-4, 9, 11-14 and 16-19 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 3-4, 9-12 and 17-18 of copending Application No. 10/650,226 and claims 1-6, 9-14 and 16-17 of copending Application No. 10/650,495 is not the only remaining rejection in the instant application, and thus, these two double patenting rejections are maintained for the reasons of record.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Mruk whose telephone number is (571) 272-1321. The examiner can normally be reached on Monday-Thursday from 7:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta, can be reached on (571) 272-1316. The fax phone

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number for the organization where this application or proceeding is assigned is (703)

872-9306.

BM

Brian Mruk
June 14, 2005

Brian P. Mruk
Brian P. Mruk
Primary Examiner
Tech Center 1700